

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68846; File No. SR-FINRA-2013-009)

February 6, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the “Late Report—T+N” Fee Applicable to Members Using the FINRA/Nasdaq Trade Reporting Facility

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 1, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7620A to modify the “Late Report—T+N” fee applicable to members that use the FINRA/Nasdaq Trade Reporting Facility (the “FINRA/Nasdaq TRF”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES

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7600. CHARGES FOR TRADE REPORTING FACILITY SERVICES

7600A. CHARGES FOR FINRA/NASDAQ TRADE REPORTING FACILITY SERVICES

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7620A. FINRA/Nasdaq Trade Reporting Facility Reporting Fees

The following charges shall be paid by participants for use of the FINRA/Nasdaq Trade Reporting Facility. In the case of trades where the same market participant is on both sides of a trade report, applicable fees assessed on a "per side" basis will be assessed once, rather than twice, and the market participant will be assessed applicable Non-Comparison/Accept (Non-Match/Compare) Charges as the Executing Party side only.

Non-Comparison/Accept (Non-Match/Compare) Charges:	
Tape	Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap
A	2500
B	2500
C	2500
Media/Executing Party	

Monthly Charge	Maximum Monthly Charge if Capped
$(\$0.018) \times (\text{Number of Media/Executing Party Reports During the Month})$	$(\$0.018) \times (\text{Required Daily Average Number of Media/EP Trades for Tape A, B or C}) \times (\text{Number of Trading Days During the Month})$
Non-Media/Executing Party	
Monthly Charge	Maximum Monthly Charge if Capped
$(\$0.018) \times (\text{Number of Non-Media/Executing Party Reports During the Month})$	$(\$0.018) \times 2500 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month})$
Media/Contra	
Monthly Charge	Maximum Monthly Charge if Capped
$(\$0.013) \times (\text{Number of Media/Contra Reports During the Month})$	$(\$0.013) \times 2500 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month})$
Non-Media/Contra	
Monthly Charge	Maximum Monthly Charge if Capped
$(\$0.013) \times (\text{Number of Non-Media/Contra Reports During the Month})$	$(\$0.013) \times 2500 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month})$
Standard Fees:	
Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7230A(h)	\$0.03/side
Comparison/Accept	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report—T+N	\$0.288/[side] <u>trade</u>

	<u>(charged to the Executing Party)</u>
Query	\$0.50/query
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party

••• **Supplementary Material:** -----

.01 No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by The NASDAQ OMX Group, Inc. ("NASDAQ OMX") and utilizes Automated Confirmation Transaction ("ACT") Service technology. In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and NASDAQ OMX entered into a limited liability company agreement (the "LLC

Agreement”). Under the LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/Nasdaq TRF. NASDAQ OMX, the “Business Member,” is primarily responsible for the management of the FINRA/Nasdaq TRF’s business affairs, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. As such, the Business Member establishes pricing for use of the FINRA/Nasdaq TRF, and such pricing is implemented pursuant to FINRA rules that must be filed with the SEC and be consistent with the Act.⁵ In addition, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF.⁶

Pursuant to Rule 7620A, FINRA members are charged certain fees for trade reporting to the FINRA/Nasdaq TRF. Currently, the FINRA/Nasdaq TRF imposes a “Late Report—T+N” fee of \$0.288 on each party to a late trade report that is submitted one or more days after trade date (T+N). NASDAQ OMX, as the Business Member, has determined to modify this fee. Under the proposed rule change, the Late Report—T+N fee (which will remain set at \$0.288) will be imposed only on the member with the obligation to report the trade under FINRA rules (defined in Rule 7620A as the “Executing Party”).⁷ The responsibility for reporting trades is

⁵ Because there are two FINRA Trade Reporting Facilities operated by different exchange Business Members competing for market share (the FINRA/Nasdaq TRF and the FINRA/NYSE TRF), FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

⁶ FINRA notes that the same contractual arrangement is in place for the FINRA/NYSE TRF, with FINRA as the SRO Member and NYSE as the Business Member. The LLC agreements for the FINRA/Nasdaq TRF and the FINRA/NYSE TRF were submitted as part of the rule filings to establish the respective TRFs and can be found in the FINRA Manual.

⁷ Rule 7620A defines “Executing Party (EP)” as the member with the trade reporting obligation under FINRA rules. Under FINRA Rule 6380A(b), in a trade between a member and non-member or customer, the member has the obligation to report the trade,

imposed on only one party to the trade, and as such, NASDAQ OMX, as the Business Member, has determined that the Late Report—T+N trade report fee should only be imposed on one party to the trade as well. The proposed rule change would ensure that the contra party to a trade is not subject to a fee due to late trade reporting by the Executing Party.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change is the date of filing, February 1, 2013.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Sections 15A(b)(5) and (6) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to the FINRA/Nasdaq TRF is offered on fair and non-discriminatory terms. FINRA believes that the proposed rule change is reasonable, consistent with an equitable allocation of fees and is not unfairly discriminatory because it will reduce fees imposed on members that are contra parties to a trade that has been reported late on a T+N basis by the Executing Party and eliminate the circumstance where the contra party is charged a fee even though it has no responsibility for the late submission.

and in a trade between two members, the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5) and (6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will reduce the fees paid by some members, but will not result in a fee increase for any members. Because the price change is not expected to have a significant impact on the fees paid by market participants, FINRA does not believe that the change will affect the competitive standing of the FINRA/Nasdaq TRF or members that use the facility to report trades to FINRA.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and paragraph (f)(2) of Rule 19b-4 thereunder.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2013-009 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-009. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of FINRA. All comments received will be posted without

change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2013-009, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).